COURT OF APPEALS
DECISION
DATED AND FILED

October 15, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP1380-CR **Cir. Ct. No. 2005CF2151**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CANTRELL ROBINSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Fine, Kessler, JJ., and Daniel L. LaRocque, Reserve Judge.

¶1 PER CURIAM. A jury found Cantrell Robinson guilty of one count of first-degree intentional homicide; one count of armed robbery; and one count of first-degree recklessly endangering safety, all as a party to a crime. *See* WIS.

STAT. §§ 940.01(1)(a); 943.32(1)(a); 941.30(1); & 939.05 (2005-06).[1] On appeal, Robinson contends that the statements he gave to police were involuntary and the circuit court should have granted his pretrial motion to suppress. Robinson also contends that the State failed to prove the "intent to kill" element of first-degree intentional homicide. *See* § 940.01(1)(a) (First-degree intentional homicide is defined as "caus[ing] the death of another human being with intent to kill that person or another."). We are not persuaded by either argument and, accordingly, we affirm.

¶2 The facts are essentially undisputed. On April 9, 2005, Benjamin Chestnut was killed during an armed robbery and carjacking. Chestnut, Antoine Sanders, Joevashaun Ward, and several other persons were standing outside a white Monte Carlo owned by Ward when Cantrell Robinson, his brother, Cortez, and his cousin, Aldric, approached. Cantrell was armed with a 9-millimeter semiautomatic handgun. In statements given to police after his arrest, Cantrell admitted that he, Cortez and Aldric had planned to rob the group, and that he and Aldric were armed with guns. Cantrell also admitted that when he was about ten yards away from the group, he heard shots and he then fired three or four times toward the group. Chestnut was killed by a gunshot to the back of the head. Sanders testified that Cantrell told him to "lay it down" which Sanders understood as a demand that he give Cantrell whatever was in his pockets, but before he could comply, Cantrell shot him in the back. Ward testified that the men took $490 from him and then left the scene with his car. A forensic firearm expert testified that

[1] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

the bullet that killed Chestnut, the bullet that was recovered from Sanders, and a bullet that was recovered from a nearby house were fired by the same gun.

¶3 We first address Robinson's pretrial suppression motion. Robinson argued that his statements were given involuntarily and in violation of his constitutional right to an attorney. At the evidentiary hearing, two detectives and Robinson testified. Detective Erik Gulbrandson testified that he interviewed Robinson on May 1, 2005, and on May 3, 2005. At the beginning of each interview, Detective Gulbrandson advised Robinson of his constitutional rights and asked Robinson if he understood them. On each occasion, Robinson told Detective Gulbrandson that he understood his rights and wanted to waive them and make a statement. Detective Gulbrandson testified that Robinson never asked for a lawyer.

¶4 Detective Louis Johnson testified that he interviewed Robinson on May 2, 2005. At the beginning of the interview, Detective Johnson advised Robinson of his constitutional rights and asked Robinson if he understood them. Robinson told Detective Johnson that he understood his rights and wanted to waive them and make a statement. Detective Johnson testified that Robinson never asked for a lawyer.

¶5 Robinson's testimony differed from that of the detectives. Robinson testified that he asked for a lawyer "before, during and after both interviews" with Detective Gulbrandson. Robinson also testified that he asked for a lawyer when he was arrested because the police had "beaten [him] up" and "hit [him] in the head with guns and everything." Robinson testified that during the May 1, 2005 interview, he asked for a lawyer "[o]ver ten times" and that he also asked for a lawyer during the May 3, 2005 interview. The May 3, 2005 interview began at

approximately 2:30 a.m., and Robinson testified that Detective Gulbrandson told him that "no lawyers work at that hour." Robinson testified that he asked for a lawyer "repeatedly" during the interview with Detective Johnson. Robinson admitted that the detectives informed him of his constitutional rights before each interview "but they never g[a]ve [him] a lawyer."

¶6 At the conclusion of the evidentiary portion of the hearing, the circuit court rendered an oral decision. The court found that Robinson was advised of his constitutional rights at the beginning of each interview, that he "waived his ***Miranda***[2] [r]ights … knowingly, intelligently and voluntarily." The court further found that Robinson "apparently understood all those rights [and] [n]ever asked any questions about those rights." (Footnote added.) The court then made several findings regarding the "creature comforts" given to Robinson during the interviews and found that "[t]here were no promises or threats" made by the detectives. The court found that Robinson "was responsive to everything that was asked and was very articulate … and remained alert through the course of the interviews." The court stated that it was "tak[ing] into consideration the totality of all the circumstances and balancing [Robinson's] characteristics, what it could observe based upon how [Robinson] testified and what the testimony was [concerning] any type of police pressure." The court concluded that Robinson's statements "were a voluntary product of his free and unconstrained will reflecting deliberateness of choice and thought." The court found that Robinson's statements were "certainly not coerced or a product of any type of police pressure–or practice." The court concluded that Robinson "waived his constitutional rights,

[2] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

[and] voluntarily and intelligently waived them." Accordingly, the circuit court denied Robinson's motion.

¶7 On appeal, Robinson urges this court to reverse the circuit court's ruling because the circuit court "made no findings of fact as to whether Robinson did, or did not, unambiguously invoke his right to counsel." We reject Robinson's argument.

¶8 As the State aptly points out in its brief, "[w]hen a trial court does not expressly make a finding necessary to support its legal conclusion, an appellate court can assume that the trial court made the finding in the way that supports its decision." ***State v. Echols***, 175 Wis. 2d 653, 673, 499 N.W.2d 631, 636 (1993). "Where it is clear under applicable law that the trial court would have granted the relief sought by the defendant had it believed the defendant's testimony, its failure to grant the relief is tantamount to an express finding against the credibility of the defendant." ***Id.***, 175 Wis. 2d at 673, 499 N.W.2d at 637.

¶9 In this case, although the circuit court did not make a factual finding on the precise question of whether Robinson asked for a lawyer, it did expressly conclude that Robinson waived his constitutional rights voluntarily and intelligently. If the circuit court had believed Robinson's testimony that he asked for a lawyer and that the detectives ignored his requests, then the court would have been obliged to suppress Robinson's statements. By denying the suppression motion, the circuit court implicitly rejected Robinson's testimony as not credible. *See* ***id.***, 175 Wis. 2d at 673, 499 N.W.2d at 636–637.

¶10 We next consider Robinson's challenge to the sufficiency of the evidence, a challenge that is limited to his conviction for first-degree intentional homicide charge, as a party to a crime. Robinson argues that the State presented

"no evidence that whoever shot the victim ever formed the intent to kill." As noted above, Robinson admitted firing "three or four shots" in the direction of a group of "seven or eight" people who were standing on the sidewalk about ten yards away from him. Robinson argues that the evidence showed "only that Chestnut was shot in the head during the course of a carjacking" and that there "is simply no evidence concerning the shooter's conduct, the shooter's words, or the shooter's gestures taken in the context of the circumstances [and] [i]n the absence of such evidence there simply is no basis to infer that the shooter ever formed the intent to kill Chestnut." Robinson's argument is not persuasive.

¶11 A person commits first-degree intentional homicide when he or she "causes the death of another human being with intent to kill that person or another." WIS. STAT. § 940.01(1). Because Robinson was charged as being a party to the crime of first-degree intentional homicide, the State was required to prove either that Robinson intended to kill Chestnut or another or that Robinson intentionally aided and abetted someone else who intended to kill Chestnut or another. *See* WIS. STAT. § 939.05. A person acts "[w]ith intent to" when he "either has a purpose to do the thing or cause the result specified, or is aware that his … conduct is practically certain to cause that result." WIS. STAT. § 939.23(4). When a person intentionally points a loaded gun at a vital part of the body of another person and fires it, "'that fact alone establishes intent to kill, in the absence of evidence rebutting this presumption.'" ***State v. Webster***, 196 Wis. 2d 308, 322–323, 538 N.W.2d 810, 815–816 (Ct. App. 1995) (citation omitted).

¶12 A finding of guilt may rest on circumstantial evidence. ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752, 755 (1990). Indeed, "circumstantial evidence is often-times stronger and more satisfactory than direct evidence." ***Ibid.*** A jury "may infer intent from the circumstances surrounding

one's acts since direct proof of intent is rare." ***State v. Weeks***, 165 Wis. 2d 200, 210, 477 N.W.2d 642, 646 (Ct. App. 1991). The standard of review is the same whether the case is based on direct or circumstantial evidence:

> [A]n appellate court may not reverse a conviction unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.

Poellinger, 153 Wis. 2d at 501, 451 N.W.2d at 755. Accordingly, we must look at the "evidence in a light most favorable to the jury's verdict." ***State v. Bannister***, 2007 WI 86, ¶22, 302 Wis. 2d 158, 168, 734 N.W.2d 892, 897.

¶13 Robinson admitted to firing several gunshots toward Chestnut and the others. Sanders identified Robinson as the person who shot him, and forensic evidence established that the bullet recovered from Sanders was fired from the same gun that fired the bullet that killed Chestnut. The evidence is undisputed that Chestnut was shot in the back of the head. A jury could infer that the person who fired that gunshot did so with the intent to kill. *See* ***Webster***, 196 Wis. 2d at 322–323, 538 N.W.2d at 815–816. We conclude that the facts, and the reasonable inferences that the jury was entitled to draw from those facts, were sufficient to prove that either Robinson or one of his co-actors acted with intent to kill.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.